

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

NO. 18-cr-20085

HON. PAUL D. BORMAN
United States District Judge

D-1 DWIGHT WILLIAMS,
a.k.a White, a.k.a. Woody,

D-2 MICHAEL DAVIS,
a.k.a. Caine, a.k.a. Novacaine, a.k.a. Killa,

D-3 CHRISTOPHER DAVIS,
a.k.a. Future, a.k.a. Gunna Traum,

D-4 DAVID ALLEN,
a.k.a. Dirt,

Defendants.

Joint Report Regarding Case Status—February 2021

On October 20, 2020, as a result of the global pandemic, the Court entered an order adjourning trial in this matter indefinitely. As part of the Order, the parties are to file joint periodic reports outlining the status of the case and any changes in the circumstances that justify the indefinite continuance. For the reasons explained below, the parties believe that the indefinite continuance remains justified.

- (1) The unprecedented and exigent circumstances created by COVID-19 and related coronavirus health conditions have created a health emergency throughout the United States and numerous foreign countries that has resulted in widespread societal disruption.
- (2) In order to slow the spread of the outbreak and lessen the load placed on our healthcare systems, various restrictions have been imposed on travel, access to public facilities, and government functions. As part of these efforts, on March 13, 2020, the court postponed indefinitely most in-court proceedings, including trials, before district judges and magistrate judges in the Eastern District of Michigan in all criminal (and civil) cases and matters. *See* Administrative Order 20-AO-021. This Order also reflected the fact that the court cannot properly secure the presence of sufficient jurors in the courthouse without jeopardizing the health and safety of the prospective jurors, as well as the health and safety of court personnel. That order further reflected the reality that the court staff, the Court Security Officers, and the Marshals Service could not operate or provide access to in-court proceedings without jeopardizing their health and safety.
- (3) On July 2, 2020, the court superseded Administrative Order 20-AO-021 with Administrative Order 20-AO-38, which notes that “[j]ury trials

during the pandemic present unique challenges.” The continuing need for the social distancing makes impracticable if not impossible activities necessary for the conduct of trials, such as the gathering of large jury venire pools, the voir dire process, and the seating of jurors in a jury box. Administrative Order 20-AO-38 also recognizes that “[c]onventional courtroom layouts do not allow jury trial participants to adhere to the necessary precautions to reduce the possibility of exposure to the disease.” Likewise, social distancing and the wearing of facemasks impose significant barriers to effective communication both before and during trials between defendants and defense counsel, among members of the prosecution team, and between attorneys and witnesses.

(4) Administrative Order 20-AO-38 also states:

Jury trials will not resume until the following can be accomplished:

- screening can be commenced on potential jurors to minimize the chance of an infected individual entering the courthouse;
- courtrooms and jury gathering spaces can be modified to comply with physical distancing and safety requirements; [and]
- prospective jurors and sworn jurors can be provided with personal protective equipment (e.g., face masks, gloves, possibly face shields) where necessary.

(5) To date, these conditions have not been achieved, and it is unclear at this time when they will be. Thus, as of now, no criminal trials are scheduled

to take place in the Eastern District of Michigan. As the court stated in its September 8, 2020, revised Administrative Order (see 20-AO-38 (REVISED)), “[j]ury trials will commence on a date yet to be determined...”

- (6) On July 21, 2020, the court issued Administrative Order 20-AO-39, which explicitly found, after considering current conditions in the state of Michigan, that “proceeding with a jury trial at this time would be impossible, or result in a miscarriage of justice.”
- (7) After this Court’s October 20, 2020 Order, the severity of the pandemic increased in the community. On November 18, 2020, the Michigan Department of Health and Human Services (MDHHS) issued an epidemic order requiring more forceful mitigation techniques in an effort to reduce the spread of the virus. The order place particular limits gatherings and mandated face masks in certain circumstances. *See Coronavirus order 11-15-2020.*
- (8) On December 18, 2020, the MDHHS continued its efforts to combat COVID-19 again issuing a Gatherings and Face Mask Order. *See Coronavirus Order 12-18-2020.*
- (9) On February 4, 2021, the MDHHS again issued an Epidemic Order on Gatherings and Face Masks in an effort to combat the virus. *See*

Coronavirus Order 4-4-2021. In the order, the Director of the MDHHS concludes that “the COVID-19 pandemic continues to constitute and epidemic in Michigan” and that “control of the epidemic is necessary to protect the public health and that it is necessary to restrict gatherings and establish procedures to be followed during the epidemic to ensure the continuation of essential public health services and enforcement of health laws. *Id.*

- (10) Counsel for the defense and the government continue to face an inability to adequately prepare for trial. Due to the severe restrictions imposed on movement, meetings, and travel recommended by public health officials and required under Health Orders, neither defense counsel nor counsel for the government are able to effectively review the discovery materials and prepare for trial. For example, most jail facilities have imposed severe restrictions on visitation and have imposed internal restrictions as well. As a result, there is currently little or no ability to meet personally with defendants to review the case. Defense counsel also have limited ability to access materials, visit and interview witnesses (including, if appropriate, expert witnesses), meet with government counsel, and review discovery materials in the custody of the government. Counsel for the government are similarly limited in their ability to meet with agents

and witnesses, as well as to access material stored at government facilities. Further, counsel, U.S. Attorney's Office personnel, and victim-witness specialists have been directed to telework as much as possible and to minimize personal contact to the greatest extent possible. Trial preparation necessarily involves close contact with colleagues, witnesses, and others.

(11) Under the circumstances, the status of the case remains the same as it did in the recent past: the global pandemic prevents the Court from safely conducting jury trials and prevents the parties from properly preparing for trial. For these reasons, the indefinite continuance remains justified.

Respectfully submitted,

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Dated: February 19, 2021

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